

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM F. BANKHEAD,

Plaintiff,

-v.-

JOHN MERCANDETTI, et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>11/22/10</u>
REPORT AND
RECOMMENDATION

10 Civ. 4134 (GBD) (JLC)

JAMES L. COTT, United States Magistrate Judge.**To the Honorable George B. Daniels, U.S.D.J.:**

The complaint in this matter was filed on May 19, 2010 and the summons was issued on that date. (Doc. No. 2). By Order dated July 15, 2010, Mr. Bankhead was advised that he was required to arrange for service of the summons and complaint on the defendants no later than September 16, 2010. (Doc. No. 6). By Order dated August 19, 2010, I granted Mr. Bankhead's request for an extension of time to effectuate service. (Doc. No. 8). The Order directed Mr. Bankhead to serve the defendants by October 18, 2010, and warned him that his case could be dismissed if he failed to do so. By Order dated September 10, 2010, I granted Mr. Bankhead's second request for an extension of time to serve the defendants. (Doc. No. 9). The Order directed Mr. Bankhead to arrange for prompt service by October 29, 2010, and again advised him that his case could be dismissed for failure to serve.

To date, there has been no proof of service filed with respect to any of the defendants, nor has there been an application for an extension of time showing good cause for failure to serve. Upon inquiry, we have learned from the Marshal's Service that it has received no request from Mr. Bankhead to effectuate service.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

USDC SDNY
DATE SCANNED 11/22/10

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

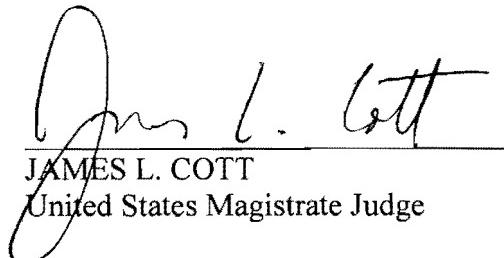
The 120-day period permitted under Rule 4(m) has expired.

For these reasons, and because this is not a case in which the Court should exercise its discretion to grant an extension in the absence of good cause, see Zapata v. City of New York, 502 F.3d 192 (2d Cir. 2007), I recommend that the complaint be dismissed without prejudice pursuant to Rule 4(m).

**PROCEDURE FOR FILING OBJECTIONS
TO THIS REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days from service of this Report to file any objections. See also Fed. R. Civ. P. 6(a), (e). Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with copies sent to the Honorable George B. Daniels and to the undersigned, 500 Pearl Street, New York, New York 10007. Any request for an extension of time to file objections must be directed to Judge Daniels. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985).

Dated: New York, New York
November 19, 2010



JAMES L. COTT
United States Magistrate Judge

Copies of this Order have been mailed to the following:

William F. Bankhead
c/o Jenkins
446 Netherland Avenue

Staten Island, New York 10303

Pro Se Office - Room 230

Hon. George B. Daniels